No. 16,096

United States Court of Appeals

For the Ninth Circuit

JOSEPH F. BLAYLOCK,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

ORLEANS VENEER AND LUMBER CO., a corporation,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF OF APPELLANT ORLEANS VENEER AND LUMBER CO.

HUBER & GOODWIN,
550 Eye Street, Eureka, California,
Attorneys for Appellant
Orleans Veneer and Lumber Co.

Subject Index

Table of Authorities Cited

Codes

Texts

No. 16,096

United States Court of Appeals

For the Ninth Circuit

JOSEPH F. BLAYLOCK,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

ORLEANS VENEER AND LUMBER CO., a corporation,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF OF APPELLANT ORLEANS VENEER AND LUMBER CO.

---

1. BLAYLOCK'S PURCHASE PROTECTS ORLEANS.

In this portion of the brief, it is the desire of Orleans Veneer and Lumber Co. to adopt the brief of appellant Joseph F. Blaylock in order to prevent repetition of facts, argument and authorities. It is submitted that appellant Blaylock's position be first determined by the Court. In the event that Blaylock is the legal owner of Section 34, Orleans' position is

that of a holder of a security instrument and party to an enforceable agreement with Blaylock, which does not concern this Court.

However, as the trial Court apparently based its decision on the lack of the jurisdiction of the State of California to tax the land involved here in Section 34, this phase of the case will be covered briefly by this appellant.

A review of the cases cited by the trial Court, that is: *Miller v. McKenna,* 23 Cal. 2d 774, 174 Pac. 2d 531, and *Gaspard v. Edward M. Le Baron, Inc.,* 107 Cal. App. 2d 356, 256 Pac. 2d 278, are found to involve issues other than are to be determined here. The law enunciated by these cases regarding the jurisdiction of the state to tax becomes applicable only if it can be said that title to subject Section 34 property remained in the appellee at all times, or that the reformation now sought, if granted, restores the title back to the appellee as of the date the appellee originally granted it by patent. The above cited cases generally concern erroneous assessments of public land held by a governmental body.

It must be admitted that title to the subject Section 34 property left appellee, whether it was intended or not, and that it rested in the patentee, whether he intended it or not, as a patent is a conveyance from the United States to some person, transferring title from the government in and to the land itself. *Los Angeles v. Mono County,* 108 Cal. App. 655, 292 Pac. 539. A patent of land from the United States passes to the patentee all of the interest of the United States,

whatever it may be, including things connected with the soil as timber and improvements on the realty which are a part thereof. *Fremont v. Flower,* 17 Cal. 199; *Collins v. Bartlett,* 44 Cal. 371. By so doing, it became the property of a citizen of the State of California over which the State has jurisdiction to levy tax and follow the legislative enactments of sale as was done. By issuing a patent, the government was estopped to assert title to the premises. *Boggs v. Merced Mining Co.,* 14 Cal. 279. After the patent is issued the land ceases to be public land of the United States. *Vore v. Ephraim,* 173 Cal. 245, 154 Pac. 719.

The equitable doctrine of reformation is not applied "nunc pro tunc." The rights of intervening third parties are protected by statute as will be hereinafter discussed. Therefore, if title left the appellee and is to be restored now, the acts of all parties, including that of the State of California, must be considered. While the appellee has a right to show it is the real owner of the subject Section 34 property, it can be done only without prejudice to the rights acquired by third parties, in good faith, for value. The State of California had the right to tax the property of one of its citizens who held the title thereto, and the right to sell it to the purchaser Blaylock.

Even where a patent is illegally obtained, which is not the case here, it carried legal title to the patentee even though the act under which the patent was secured declares that in such a case the patentee must forfeit the money he paid for the lands and all right and title to them, and that any grant or conveyance

he may have made, except in the hands of a bona fide purchaser, is null and void. If title would in fact be void, he would have none to convey to a bona fide purchaser. *Mery v. Brodt,* 121 Cal. 332, 53 Pac. 818. This patent is not void on its face to prevent a bona fide purchaser.

If the property was not within the state's taxing jurisdiction, where was it?

> "All property in this state, not exempt under the laws of the United States or of this state, is subject to taxation under this code." *California Revenue and Taxation Code,* Section 201.

If title had been conveyed by the patentee, Patterson, to a bona fide purchaser for value, without notice, the United States could show its ownership, subject only to the third party's rights. The method of transfer through the state to Hyrum S. Sims seems no different than any other transfer.

In the event that the Court finds that Orleans is not protected by Blaylock's position, Orleans states its further position as follows:

2. ORLEANS IS A BONA FIDE MORTGAGEE.

The facts and position of Orleans must be examined in the light of certain statutes:

Civil Code, Section 1107.

> "Every grant of an estate in real property is conclusive against the grantor, also against everyone subsequently claiming under him, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title

or lien by an instrument that is first duly recorded."

Civil Code, Section 1214.

"Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless such conveyance shall have been duly recorded prior to the record of notice of action."

Civil Code, Section 1215.

"The term 'conveyance' as used in Sections 1213 and 1214, embraces every instrument in writing by which an estate or interest in real property is created, alienated, mortgaged or encumbered, or by which the title to any real property may be affected, except wills."

Civil Code, Section 3399.

"When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to the rights acquired by third persons, in good faith and for value."

FACTS REGARDING ORLEANS VENEER AND LUMBER CO.

The facts concerning and of which this appellant was aware as shown in the transcript are briefly as follows:

Subsequent to the purchase by Blaylock of the property in Section 34, the property was first brought to the attention of Orleans Veneer and Lumber Co. in the week prior to November 5, 1956. A Mr. Yardley, previously an employee of Orleans Veneer and Lumber Co., mentioned it to Mr. Young, timber cruiser and logging engineer of Orleans Veneer and Lumber Co., as a mining claim which loggers Cookman and Starritt were interested in logging and in need of an advance of money. Mr. Young examined the property on November 5, 1956, accompanied by Cookman and Starritt, noting that it was not a mining claim, as it was too large in area. He located the surveyed property by an old, worn and torn map furnished by Cookman and Starritt upon which considerable portions of the printing were not legible. He stated that he noted the map only for an attempt to locate the property, and that he was able to do so even though he encountered heavy snow and rain that day. No examination of the map was had for purposes other than to locate the property. The map was thought to be similar to the photocopy of the Parrott survey map which Hyrum S. Sims furnished to Blaylock (Plaintiff's Exhibit 10) but in much worse condition. Young located the property by starting at a corner that he later found to be the parcel which had been occupied by Hyrum S. Sims.

It should be noted that no employee of Orleans Veneer and Lumber Co. knew of Sims' ownership of either parcel at any time until Blaylock furnished Orleans Veneer and Lumber Co. the deed from Sims to the property in Section 34, which was in December of 1956. Even then, employees of Orleans Veneer and Lumber Co. knew nothing of Sims' claimed ownership and right to log, and that he had logged the property in Sections 27 and 28.

Mr. Young stated that his purpose was to locate and examine the property for volume and logging. He estimated approximately one million board feet could be removed. He made a report of this work to Orleans by his letter of November 5, 1956. (Defendant Orleans' Exhibit J.)

It cannot be said that any notice, actual or constructive, can be given to Orleans Veneer and Lumber Co. from the fact that the parcel was a homestead instead of a mining claim as Mr. Young had been advised, nor can it be said that Orleans had any duty to make further inquiry as to the source of ownership because of such a fact.

Mr. Young was approached by Blaylock on November 12, 1956 who, according to Cookman and Starritt, was the owner of the property. Blaylock desired a loan with the property to be given as security, and with all the logs to be removed therefrom to be delivered to Orleans Veneer and Lumber Co. Young wrote a letter to "Bill" (Strauser) of Orleans Veneer and Lumber Co. regarding the matter. (Orleans' Exhibit K.)

Subsequently Mr. Strauser prepared an agreement (Plaintiff's Exhibit 15) and the security instrument (Plaintiff's Exhibit 8) and the same were executed thereafter by the parties, and the security instrument and $9,000.00 delivered to the Siskiyou County Title Company with a letter of instructions (Orleans' Exhibit L) to issue title insurance, record the security instrument and issue the $9,000.00 to Blaylock. The title company then asked for a quitclaim deed to be held in escrow to clear title to the Section 34 property when the money was repaid and the agreement completed. The same was furnished. (Letters of transmittal in evidence as Orleans' Exhibit M.)

Mr. Strauser, as Mr. Young, had no information or no indication that there was a misdescription of patent, or that it was claimed by others that Blaylock was not the owner of the Section 34 property, or that title to the property was through a tax sale by the State of California until some months later, as the title company did issue title insurance showing Blaylock to be the owner of the property in Section 34. (Orleans' Exhibit N.) Based upon these facts, Orleans Veneer and Lumber Co. is in the position of a bona fide mortgagee.

NATURE OF THE INSTRUMENT.

The document is a security instrument conveying an interest in real property, and the document affects title to real property.

The document begins "As security for the payment and the performance of all other terms and conditions . . ." and after describing the property affected, states as follows:

> "This assignment and transfer is not a sale, but is solely by way of security. In case of any default hereunder or of said agreement, Orleans Veneer and Lumber Co. may enforce its rights under this assignment and transfer either as a pledgee, mortgagee or in any other manner permitted or provided by law."

Mr. Blaylock stated he intended to give security with the timber only, and Mr. Strauser of Orleans Veneer and Lumber Co. stated that it was intended to transfer all rights to the property as security. However, this makes no difference, as it has been well settled in California that timber and trees are real property. *McKeever v. Locke-Paddon Co.,* (1922) 207 Pac. 1040, 58 Cal. App. 51, *Stockel v. Slich,* (1931) 297 Pac. 925, 112 Cal. App. 588.

It is only where standing timber is purchased separately from land for the purpose of severance, as to those claiming under or by reason of the contract of sale, that timber is personal property. *Palmer v. Wahler,* (1955) 285 Pac. 2d 8, 133 Cal. App. 2d 705.

The document therefore pertains to real property. It also affects the title to real property and is a conveyance of an interest in it. Such was stated to be the intention of both parties affected by the instrument, as evidenced by the testimony of Mr. Blaylock and Mr. Strauser, and such testimony is admissible

to explain any ambiguity created by the document, if any ambiguity can be said to exist. Needless to say, it is not the normal or typical document used in such a situation. However, it is felt that its meaning is clear. Orleans Veneer and Lumber Co. may enforce its rights under the document as a mortgagee. While the document is not labeled a mortgage, it is a security instrument giving to Orleans Veneer and Lumber Co. the same rights as a mortgagee.

Mortgages are specifically included as a conveyance under Section 1215 of the Civil Code for the meaning of the word as used in the Recording Act. (Section 1214 of the Civil Code.) *Booker v. Castillo,* (1908) 98 Pac. 1067, 154 Cal. 672. Deeds of trust are also conveyances for the purposes of such statute. *Barbari v. Rothschild,* 7 Cal. 2d 537, 61 Pac. 2d 760 (1936). A lease of property is likewise a conveyance. *Dean v. Brower,* (1932) 119 Cal. App. 412, 6 Pac. 2d 580. Likewise, an assignment for the benefit of creditors is a conveyance. *Moore v. Schneider,* 196 Cal. 380, 238 Pac. 81 (1925). See also *Kellogg v. Huffman,* (1934) 137 Cal. App. 278, 30 Pac. 2d 593. See also *Lyon's Estate,* 163 Cal. 803, 127 Pac. 75, wherein it was held,

> "A mortgagee comes within the rule relating to purchasers for value and is protected in the same manner. He is entitled to protection under the recording statute as a bona fide grantee."

BONA FIDE.

The Court in *Torrez v. Gough,* 137 Cal. App. 2d 62 at page 71, 289 Pac. 2d 840 (1955) states that the primary purpose of Section 1214 of the Civil Code was to protect those who in good faith acquire an *interest* in real property in reliance on the record.

The Court, in *Beach v. Faust,* (1935) 40 Pac. 2d 822, 2 Cal. 2d 290, stated as follows:

> "The recording laws were not enacted to protect those whose ignorance of title is deliberate and intentional, nor does a mere nominal consideration satisfy the requirement that a valuable consideration must be paid. Their purpose is to protect those who honestly believe they are acquiring a good title and who invest some substantial sum in reliance on that belief."

The *Southern Pacific Company v. Dore* case, 34 Cal. App. 521, 168 Pac. 147, relating to a grant of the "right, title and interest" of the grantor relied upon by appellee concerns only covenants created by such a document and does not concern the rights of third parties as the instant case.

The *Lombardi v. Sinanidea* case, 71 Cal. App. 272, 235 Pac. 455, relied upon by appellee also states the language is that of a grant of quitclaim, and did not involve the recording statutes. These statutes must of necessity be involved in this present proceeding. Because an instrument is a quitclaim instrument does not prevent the grantee from becoming a bona fide party, as the Court stated in *Beach v. Faust,* supra, following the quotation,

> "That a deed conveys merely the right, title and interest of the grantor does not prevent the grantee from being a purchaser for a valuable consideration, without notice, within the recording laws, so as to be protected from unrecorded instruments affecting the title to the property of which he had no notice." (Case citations.)
>
> "The pertinent provisions of our recording laws are found in Sections 1213, 1214 and 1217 of the Civil Code. It has long been the accepted rule in this state that real estate, or an interest in real estate, can be aliened or assigned by a quitclaim deed. *Graff v. Middleton,* 43 Cal. 341, 344. Such a deed is good as against even an unrecorded grant, bargain and sale deed. *Dunn v. Carroll,* 101 C. A. 209, 281 P. 506 and cases cited."

There can be no doubt that Orleans Veneer and Lumber Co. is protected by the recording statutes as well as by the reformation statutes. (Civil Code Section 3399.) The Federal Court's function in such a case as this is to inquire how California Courts have applied the statute. *McConnell v. Pickering Lumber Corp.,* (1955) 217 Fed. 2d 44, which case involves Civil Code Section 3399. The United States Government is not exempt from the affect of such statutes.

Section 3399 of the Civil Code states that

> "contracts (includes deeds,) may be revised to express the intention of the parties, *so far as it can be done without prejudice to the rights acquired by third parties in good faith and for value.*" (Emphasis added.)

This general rule of law as codified in California is almost universally established. See 44 A. L. R.,

page 79 and the supplemental annotation in 102 A. L. R., page 826, covering cases and jurisdiction applying the doctrine protecting innocent parties or subsequent encumbrancers for a present consideration. See also 44 A. L. R., page 98, covering and reporting cases denying reformation "where the instrument identified an entirely different piece of property."

This doctrine has long been the law and was applied in *United States v. Payson,* District Court, N. D., California (1863) Federal Cases, Volume 27, Federal Case 16,016 against the reformation of a deed under a patent. The Court said as follows:

> "If the description in the deed were impossible or repugnant, the Court would, necessarily, be obliged to construe it and correct its calls so as to make them conform to the probable intention of the parties. But the tract partly on land and partly on water, described in the deed, may have been intended to be granted though it seems to me highly improbable. The surveyor who furnished the description may have measured the land courses and have obtained the others by calculation. And, as against third parties, who purchased the remaining interest of the grantor at Sheriff's sale, ignorant of his intentions in making his previous conveyance, except so far as the conveyance disclosed them, it has appeared to me that this application to reform it cannot, in this proceeding, be entertained."

The government contends the word "assignment" in the security instrument cannot operate as a conveyance of real property. It is noted in 15 Cal. Jur. 2d, page 402, paragraph 6 as follows:

> "The term 'assignment' may be used to signify a transfer of title to or ownership of property. Thus, while 'assign' is not one of the usual operative words of a conveyance of real property, it may be used as such."

See *Commercial Discount Co. v. Cowen,* 18 Cal. 2d 610, 116 Pac. 2d 599 to the effect that the word "assign" may be used to indicate an act whereby title to property is conveyed, and that the word *"transfer" may be synonymous with the word "convey,"* and connotes the passing of title by legal instrument. It is further defined in Civil Code Section 1039 as follows:

> "Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another."

See also *Beffa Estate,* 54 Cal. App. 186, 201 Pac. 616. The words "assign" and "transfer" are sufficient to convey property by deed or will.

If the words are sufficient, and there can be no doubt of it, and it was the intention of the parties to convey an interest in the real property, Orleans Veneer and Lumber Co. is and must be a taker for value and without notice under the facts and circumstances. As such, even though legal title may now be found to be in the United States Government, Orleans Veneer and Lumber Co. has an equitable interest of $9,000.00 in said property, and the United States Government must be said to hold legal title subject to said mortgage of Orleans Veneer and Lumber Co.

CONCLUSION.

Therefore, Appellant Orleans Veneer and Lumber Co. respectfully submits that the Court determine Blaylock's position first. In considering the matters, the Court must determine if there is a bona fide purchaser prior to determining the right to reformation. If a bona fide purchaser exists, reformation can be had only subject to the third party's rights. Then, even though it is found that the United States Government is now to be the legal owner, that the Court order and decree that such ownership is subject to the equity of the mortgage and contract interest of the Appellant Orleans Veneer and Lumber Co.

Dated, Eureka, California,
May 6, 1959.

Respectfully submitted,
HUBER & GOODWIN,
By NORMAN C. CISSNA,
Attorneys for Appellant Orleans Veneer and Lumber Co.